

REMARKS

Claims 1 and 3-14 are pending in this application. Claims 1 and 3-14 were rejected. Applicants respectfully respond to the Office Action.

Claims Rejections under 35 U.S.C. § 102

Claims 1, 4-6, 8-9 and 11-14 were rejected as being anticipated by U.S. Patent No. 5,713,074 to Hulbert (hereinafter “Hulbert”). This rejection is respectfully traversed.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” M.P.E.P. § 2131 (Aug. 2001) (*quoting Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). “The identical invention must be shown in as complete detail as is contained in the . . . claim.” *Id.* (*quoting Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1051, 1053 (Fed. Cir. 1987)). In addition, “the reference must be enabling and describe the applicant’s invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention.” *In re Paulsen*, 30 F.3d 1475, 1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

Applicants respectfully submit that claims 1-14 are not anticipated by Hulbert for the reasons and explanations set forth below.

With respect to claim 1, Applicants respectfully submit that Hulbert does not teach or suggest all of the limitations of amended claim 1. In particular, Hulbert does not disclose “***intentionally*** transmitting traffic information from the base station with a first symbol energy amount that is ***intentionally insufficient for correct demodulation*** of the traffic information by a mobile station.” Moreover, Hulbert does not disclose retransmitting the traffic information with “a further symbol energy amount that is ***also insufficient*** by itself for correct demodulation of the traffic information by the mobile station” as in claim 1. Finally, Hulbert does not disclose “repeating [the retransmission] until a sum of the symbol energy amounts used to transmit the traffic information initially transmitted with insufficient symbol energy for correct demodulation is great enough to permit correct demodulation by the mobile station.”

With respect to independent claims 13 and 14, the first transmission and the retransmission are both “*insufficient for correct demodulation* of the traffic information” by the mobile station.” As noted below with respect to claim 1, Hulbert requires demodulation of each transmission (or retransmission) to determining if errors are present. For this reason, a signal insufficient for correct demodulation, as instantly claimed, would simply not work in the apparatus or method of Hulbert. Moreover, Hulbert actually teaches away from the present invention, as the mode of operation of the present invention is contrary to principles of operation of the reference.

Hulbert discloses a mobile radio power control device wherein, when an error is detected in a transmitted signal, the transmit power is increased and, when no error is detected, the transmit power is reduced. (Abstract) The goal in Hulbert appears to be maintaining a constant bit error rate related to the ratio of the up and down step sizes. (Abstract) Hulbert does not disclose intentionally transmitting a signal at an energy amount that is intentionally insufficient for correct demodulation, followed by a further transmission of the same traffic information, again at an energy amount insufficient for demodulation.

The Examiner contends that Hulbert discloses a step of intentionally transmitting traffic information from the base station with a first symbol energy amount that is insufficient for correct demodulation of the traffic information by a mobile station. Applicants respectfully disagree. The Examiner points Applicants to column 3, wherein, at lines 7-10, Hulbert states that “the receiving station 22 simply demodulate[s] the data and communicate[s] this data back to the transmitting station 20.” The present invention of independent claims 1, 13 and 14 requires that the transmission be sent with an energy amount *intentionally insufficient for correct demodulation*. The present invention of independent claim 12 requires that the power allocation unit allocates power among a number of different streams of the traffic information such that *none* of the streams are initially *transmitted with enough power for correct demodulation* by the mobile station. Hulbert requires demodulation of the data in order to check for errors. Therefore, Applicants respectfully submit that Hulbert clearly cannot intentionally transmit traffic information from the base station with a first symbol energy amount that is insufficient for correct demodulation of the traffic information by the mobile station.

Additionally, the Examiner contends that Hulbert discloses retransmitting the traffic information initially transmitted with the first symbol energy amount from the base station to the mobile station, wherein the traffic information is retransmitted with a further symbol energy amount that is also insufficient by itself for correct demodulation of the traffic information by the mobile station. Applicants, again, respectfully disagree. While Hulbert may disclose retransmitting data when an error is detected (column 3, lines 17-20), Hulbert does so by increasing the energy of this transmission in order to avoid errors. As noted above, for the error checking process of Hulbert, demodulation of the data is required. Each independent claim requires the energy amount of the retransmitted traffic information to be, by itself, insufficient for correct demodulation. Therefore, Applicants respectfully submit that Hulbert clearly cannot retransmit the traffic information initially transmitted with the first symbol energy amount from the base station to the mobile station, wherein the traffic information is retransmitted with a further symbol energy amount that is also insufficient by itself for correct demodulation of the traffic information by the mobile station.

Finally, the Examiner contends that Hulbert discloses repeating the retransmission until a sum of the symbol energy amounts used to transmit the traffic information initially transmitted with insufficient symbol energy for correct demodulation is great enough to permit correct demodulation by the mobile station. Yet again, Applicants respectfully disagree. When an error is detected in Hulbert, the method increases the energy of the signal and resends the data. Hulbert neither teaches nor fairly suggests repeating the previous transmission and summing the previous transmission and the later transmission. More to the point, Hulbert teaches away from summing the transmissions because a retransmission is sent when the first transmission has an error. If the first transmission has an error therewithin, there is certainly no motivation to sum that transmission with a retransmission of the same data.

For the reasons outlined above, Applicants respectfully submit that Hulbert neither teaches nor fairly suggests the method of claim 1 or the apparatus of claims 12, 13 and 14. Reconsideration and withdrawal of the rejection of independent claims 1, 12, 13 and 14 as being anticipated by Hulbert is requested.

Claims 3-11 are allowable as depending directly or indirectly from an allowable base claim.

Claim 12 is allowable for the same reasons given above for amended claim 1.

Claim 13 is allowable for the same reasons given above for amended claim 1.

Claim 14 is allowable for the same reasons given above for amended claim 1.

Claims Rejections under 35 U.S.C. § 103

Claim 3 was rejected as allegedly being unpatentable over Hulbert in view of Jalali et al. (U.S. 6,154,659). Claim 3 depends ultimately from claim 1. It is respectfully submitted that claim 1, as amended, is not anticipated by Hulbert. Additionally, the Office Action did not rely upon Jalali et al. to make up for any deficiencies in Hulbert with regards to claim 1. Therefore, claim 3 is allowable over Hulbert in view of Jalali et al. at least by virtue of its dependency. The Examiner is therefore respectfully requested to allow claim 3.

Claims 7 and 10 were rejected as allegedly being unpatentable over Hulbert in view of Seo (U.S. 6,581,176). Claims 7 and 10 depend ultimately from claim 1. It is respectfully submitted that claim 1, as amended, is not anticipated by Hulbert. Additionally, the Office Action did not rely upon Seo to make up for any deficiencies in Hulbert with regards to claims 7 and 10. Therefore, claims 7 and 10 are allowable over Hulbert in view of Seo at least by virtue of their dependencies. The Examiner is therefore respectfully requested to allow claims 7 and 10.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicant submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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